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No. _____

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In the
Supreme Court of the United States

Rodney Alan Mattmiller,

Petitioner,

v. _____

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In a criminal prosecution brought in the name of a State, may the courts of the State entertaining such prosecution, consistently with the due process clause of the 14th Amendment, arbitrarily refuse to give the accused the benefit of the established law of the State to this substantial injury, where the face of the record discloses that relevant precedents are left unchallenged by prosecutorial authority, are judicially conceded, and are neither overruled nor distinguished, and that such precedents allow an absolute defense which cannot be waived? Otherwise stated, does due process of law, as guaranteed by the 14th Amendment, include the right of the accused in a criminal prosecution to enjoy the benefit of valid, pre-existing, unambiguous, objective principles of law which judges are duty-bound to apply impartially without regard to their personal predilections, prejudices, or wishes? More simply put, does due process require that judges give criminal defendants appearing before them the benefit of the established law?

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Comes now your petitioner Rodney Alan Mattmiller, and he shows this honorable Court the following particulars in support of his petition for writ of certiorari to the Minnesota Court of Appeals, to wit:

PARTIES

Your petitioner seeks relief in his own right against the State of Minnesota as respondent, which, in proceedings described hereinafter, prosecuted him for certain public offenses, using lawyers not qualified under and forbidden by the law of the State to act as public prosecutors.

JURISDICTION

Your petitioner seeks reversal of a judgment of the Minnesota Court of Appeals handed down on June 14, 2005, the same entitled Rodney Alan Mattmiller v. State of Minnesota, No. A04-2157 on docket of the said court, reproduced in Appendix IV hereof.

Your petitioner sought review by the Minnesota Supreme Court on July 2, 2005, as appears in Appendix III hereof. The Minnesota Supreme Court denied review by order entered August 16, 2005, as appears in Appendix I hereof.

It appears generally upon this record that your petitioner had previously been convicted of a certain public offense under the laws of the State of Minnesota, but sought to have his conviction set aside in post-conviction proceedings allowed by statute, because, as he had discovered, the lawyers prosecuting him were not properly appointed as public prosecutors according to statutes and jurisprudence of the State. By the time the case reached the Minnesota Court of Appeals, it was established on the face of the record that the lawyers prosecuting your petitioner were not lawfully appointed, as your petitioner had maintained. But the Minnesota Court of Appeals held that the deficiency in appointment was merely a technical defense which could be waived, and that, consequently, the issue could not be raised

for the first time in post-conviction proceedings, citing *State v. Persons*, 528 N. W. 2d 278 at 280 (Minn. App. 1995). In the latter case, however, it was unambiguously held on the basis of unquestioned and relevant authority of the Minnesota Supreme Court that, where a criminal prosecution is brought by a lawyer not qualified by law of the State to prosecute the case, such prosecution is void, and the nullity cannot be waived by the accused. Under Rule 28.01, Subd. 2, of the Minnesota Rules of Criminal Procedure and Rule 140.01 of the Minnesota Rules of Civil Appellate Procedure, no petition for rehearing or motion for reconsideration is ever allowed before the Minnesota Court of Appeals.

Your petitioner then sought review by the Minnesota Supreme Court asking that he be granted the benefit of the established law as unequivocally determined in *State v. Persons* earlier precedent there cited and relied upon. When the opportunity was allowed, the State expressly declined to controvert the petition for review, nor did the State claim that the law was or should be other than as set forth in *Persons* and other precedents, as appears in Appendix II hereof. Nevertheless, upon this record, with the facts and precedents clearly laid out, discretionary review was denied by the Minnesota Supreme Court. Under these circumstances, your petitioner specially sets up his claim in this petition for writ of certiorari that, even if the law of his State might have been other than it is, and yet be perfectly constitutional, *he is at least entitled to the benefit of the unambiguously established and acknowledged law of the forum State, as a necessary element due process of law guaranteed by the 14th Amendment*, of which he has been deprived in this cause. It was impossible to raise this point until the record was fully established by the order of the Minnesota Supreme Court which left standing the refusal by the Minnesota Court of Appeals to give your petitioner the benefit of the unambiguously established, expressly unchallenged, and judicially conceded law of the forum State in *State v. Persons*

and other previous decisions, thus bringing the fundamental law of the United States into play. Under Rule 28.01, Subd. 2, of the Minnesota Rules of Criminal Procedure and Rule 140.01 of the Minnesota Rules of Civil Appellate Procedure, it was not possible for your petitioner to seek rehearing or reconsideration by the Minnesota Supreme Court, so that the record raising the due process clause of the 14th Amendment could be perfected further, once discretionary review was denied.

Accordingly, your petitioner premises the jurisdiction of this Court upon 28 United States Code, Section 1257, insofar as it provides that this Court may review by a writ of certiorari the judgment of the highest court of a State in which a decision could had, in a cause where a right under the United States Constitution has been specially set up.

Jurisdiction of this Court to review this case on writ of certiorari is also premised on 28 United States Code, Section 2101, and Rule 13 of the Rules of the United States Supreme Court insofar as the allow a petition for certiorari within 90 days of the said order of the Minnesota Supreme Court entered on August 16, 2005.

Constitutional And Statutory Provisions

This case turns on the clause in the first section of the Article XIV which reads, "*...nor shall any State deprive any person of life, liberty, or property without due process of law...*"

This case also turns on certain provisions enacted by the legislature of the State of Minnesota pursuant to Article V, Section 4 or Article XII, Section 3 of the Minnesota Constitution of 1974, which authorizes the legislature to set up units of local government:

-- Section 8.01 of Minnesota Statutes, insofar as it says, "Upon request of the county attorney, the attorney general shall appear in court in such criminal cases as the attorney general deems proper," and "Whenever the governor shall so

request in writing, the attorney general shall prosecute any person charged with an indictable offense..." A county board, also called a board of county commissioners, is the legislative branch or governing body of a county as a unit of local government in the State of Minnesota.

-- Section 388.09 of Minnesota Statutes, insofar as it says, "The [county] board may employ an attorney to assist the county attorney..."

-- Section 388.10 of Minnesota Statutes, insofar as it says, "The county attorney of any county in this state who has no assistant is hereby authorized to appoint, with the consent of the county board of the county, one or more attorneys for assistant in the performance of duties."

-- Section 388.12 of Minnesota Statutes, insofar as it says, "The judge of any district court may by order entered in the minutes at any term of the court appoint an attorney of such court to act as, or in the place of, or to assist the county attorney at such term, either before the court or grand jury."

-- And Section 471.59 of Minnesota Statutes, insofar as it says, "Two or more governmental units, by agreement entered into through their governing bodies, may jointly and cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised."

-- Section 590.01 of Minnesota Statutes, insofar as it says, "Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that... the conviction obtained or sentence or other disposition made violated the person's rights under the constitution and rights of the United States or the State...may commence a proceeding to secure relief by filing a petition in the district court of the county in which the conviction was had to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the

sentence or make other disposition as may be appropriate," etc.

Statement of the Case

All operative facts are settled on the face of the pleadings of this case, as appears in Appendices V, VI, VII, and VIII hereof.

The judgment of the Minnesota Court of Appeals on June 14, 2005, which your petitioner asks this Court to review on writ of certiorari, is reproduced in Appendix IV hereof. The opinion is unreported, but it is accessible at <http://www.courts.state.mn/opinions/coa/current/opa042157-0614htm>.

The essential particulars in controversy, showing exactly how the questions of Minnesota law were raised, is set forth in detail in the sections entitled "procedural history" and "statement of the case" in the petition to the Minnesota Supreme Court for review, as reproduced in Appendix III hereof. The said particulars were left uncontroverted by the State, as appears in Appendix II. The said petition there makes detailed reference to the record as set forth in the appendix thereof, as reproduced in Appendices IV, I, VI, VII, and VIII thereof. The Minnesota Supreme Court denied review as appears in Appendix I hereof.

Your petitioner shall briefly summarize these essential particulars which can be verified in reference to the record of this cause in Appendices I, II, III, IV, V, VI, VII, and VIII hereof.

Your petitioner, a commercial airline pilot and a colonel in the air force reserve, was convicted of failure to pay certain taxes to the State of Minnesota. His main defense was that the law of the State laid down a certain definition of a taxable resident which was preempted by an Act of Congress, viz., 49 United States Code, Section 40116, under which he was guilty of no wrong. See, e. g., *Aloha Airlines Inc. v. Director of Taxation*, 464 U. S. 7 (1983). But his conviction was